RECENT IMPORTANT DECISIONS

AGENCY—RESPONDEAT SUPERIOR AS TO LIABILITY OF A LODGE FOR NEGLIGENCE OF A SUBORDINATE LODGE.—The Birmingham Lodge used what was called a "branding board" for initiating new members. A current of electricity was turned on for the purpose of creating on the blindfolded candidate an impression that he was being branded. This was so effective that it killed one candidate. Nothing daunted by this the lodge tried it on another candidate, fifteen minutes later, possibly to see if it was still working. It was, and the administrator of the estate of the second deceased candidate now sues the local lodge, some of its members individually, and also the Supreme Lodge on the theory that the local lodge was acting as its agent. The judge gave an affirmative charge for the local lodge because it was unincorporated, and for the individual defendants because, he said, the evidence had not sufficiently identified them as the persons who had taken part in the fatal ceremonies. But he submitted to the jury the question of the liability of the Supreme Lodge on the ground that there was a relation of principal and agent, because the supreme instructor had approved the use of this apparatus. For refusal to charge specifically that the Supreme Lodge would not be liable unless the local lodge were found to have been negligent, it was *held* a new trial should be granted. *Supreme Lodge of the World, Loyal Order of Moose* v. *Gustin* (Ala., 1918), 80 So. 84.

The court uses language loosely. In a case like this the doctrine of *respondeat superior* applies alike whether the relation is one of principal and agent or of master and servant, but this is no case of agency. That relation involves business dealings between the principal and third persons, *Sternaman* v. *Mut. Life Insurance Co.* (1902), 170 N. Y. 13. This distinction has not been clear in the cases till very recently. *Cf. Singer Mfg. Co. v. Rohn* (1886), 132 U. S. 518, with *Kingan* v. *Silvers* (1894), 13 Ind. App. 80. In the latter case, which seems to be the first to clearly recognize the real distinction between agency and service, will be found a valuable historical discussion. That a master may be liable for the torts of his servant, even when the servant disobeys orders is, of course, common place law, *Phil. & Read. R. Co.* v. *Derby*, 14 How. 468, and the fact that the servant escapes can have no effect on the liability of the master, for tort liability is joint and several. On the other hand, it is certain that there can be no liability under the doctrine of *respondeat superior* if the evidence shows no negligence in the servant. For refusal so to charge the jury the instant case was properly reversed, though on other facts in the case, and the other charges given, two of the judges dissented from this reversal. That liability in case of an unincorporated society rests on principles of agency, the individuals doing the acts in question being agents of all members who expressly or impliedly authorize those acts, is well settled. The unincorporated society is not a person in law and can have no liability. *Ash* v. *Guie*, 97 Pa. 493. See also *Eichbaum* v. *Irons*, 6 W. & S. 67 and *Codding* v. *Munson*, 52 Neb. 560.